

**BETTE JANE KIMBALL**  
Claimant

# KANSAS WORKERS COMPENSATION FUND

Insurance Carrier

## ISSUES

Respondent requests review by the Appeals Board of the single issue regarding **ENDFIELD** nature and extent of claimant's disability.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the whole record and hearing arguments of the parties, the Appeals Board finds as follows:

The Administrative Law Judge found the claimant had temporarily aggravated a pre-existing condition and awarded her temporary total disability and medical benefits. A claim for permanent partial disability benefits was denied. Claimant argued that the evidentiary record supported an award of either permanent partial disability based on functional impairment or on work disability. During oral argument before the Appeals Board, the respondent generally agreed with the Administrative Law Judge's decision.

The Appeals Board affirms the Award the Administrative Law Judge has entered in this matter. The Administrative Law Judge's findings and conclusions of law are found to be correct and reasonable and are adopted by the Appeals Board as its own to the extent that they are not inconsistent with the findings set forth below.

The parties in this proceeding have stipulated that on June 19, 1992, while working for the respondent, claimant sustained a personal injury by accident when she pulled wet towels from a dryer and heard a pop. She did not experience immediate pain, but after approximately twenty (20) minutes she felt pain in her lower back and pelvis area.

Claimant first sought medical treatment from a chiropractor but found no relief. She then went to her family physician, W. A. Williams, Jr., M.D., at the Hertzler Clinic, P.A., in Halstead, Kansas on June 23, 1992. Dr. Williams found that claimant complained of constant pain in her back, tingling down her left leg and muscle spasm presence in the lower lumbar area. His assessment was lumbar strain and he prescribed physical therapy, medication and took her off work. Because of the claimant's acute pain, Dr. Williams referred the claimant to R. Reschly, M.D., an orthopedic surgeon, associated with the same medical clinic.

The claimant first saw Dr. Reschly, on June 26, 1992, and found claimant had acute pain in the low back and pubic areas. He admitted the claimant to the hospital for observation from June 27, 1992 to July 2, 1992. At that time, Dr. Reschly's impression was acute and severe low back pain secondary to strain and spasms.

On the date of the regular hearing, November 18, 1993, claimant remained off work and had not performed any type of employment since her accident of June 19, 1992. She testified that she was in constant pain and could only do limited physical activities. Additionally, the claimant's physical condition was further complicated because she had broken her left tibial plateau in May 1993, and remained on crutches at that time.

On the date of his deposition, October 15, 1993, Dr. Reschly was still following the claimant in reference to both her work-related accident and her broken left leg. He had last seen the patient on October 6, 1993, for both medical conditions. With respect to claimant's work-related injury, Dr. Reschly, from X-ray studies, finally diagnosed the claimant as having a medical condition referred to as osteitis pubis. The X-ray studies

showed certain characteristic changes about the pubis symphysis with some sclerosis and some relative scalloping of the bony edges. He related the condition to the claimant's June 19, 1992 accident and opined she had a ten to fifteen percent (10-15%) permanent functional impairment as a result of that condition. However, that impairment rating was not in accordance with the AMA Guides; claimant's knee injury complicated the assessment of impairment and it was Dr. Reschly's opinion that claimant did tend to exaggerate her symptoms. From claimant's past medical history, it was also found that approximately twenty (20) years ago she was involved in an automobile accident which injured her back and required a laminectomy and fusion at L5-S1. Dr. Reschly assessed an impairment rating in accordance with the AMA Guides, Third Edition, Revised, of ten to fifteen percent (10-15%) as a result of the automobile injury.

The respondent and its insurance carrier, referred the claimant to a Wichita, Kansas orthopedic surgeon, Robert Eyster, M.D., for evaluation and examination. Dr. Eyster saw the claimant on November 4, 1993, and in regard to the osteitis pubis diagnosis, he opined that this condition is an irritation in the pubic epiphysis area of unknown etiology. The condition can be due to strain of the ligaments in the pubic epiphysis area but usually is not secondary to trauma. Dr. Eyster further expressed his opinion within a reasonable medical probability that the injury claimant described "did not appear to be of the kind of significance that it would take to affect the pelvic ring." It was Dr. Eyster's opinion that after claimant's laminectomy and fusion she had a fifteen percent (15%) functional impairment and she had no increase due to her present complaints. Even though Dr. Eyster believed that osteitis pubis was the correct diagnosis in this case, he did not believe that the condition was related to the claimant's injury. He also opined that the condition did not result in any permanent functional impairment.

The Appeals Board, as the trier of fact, has the function to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. See Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 786, 817 P.2d 212, rev. denied 249 Kan 778 (1991). In the instant case, the Appeals Board finds that Dr. Eyster's testimony and opinions are the most persuasive and should be given the most weight concerning the issue of whether the claimant is entitled to permanent partial general disability benefits. Dr. Eyster did not relate claimant's osteitis pubis condition to her work-related incident that occurred on June 19, 1992. He further opined that the osteitis pubis condition did not result in any permanent functional impairment.

The Appeals Board does find that the record contained evidence that the claimant's pre-existing low back condition was at least temporarily aggravated by the claimant's work-related injury. Dr. Williams, after his initial examination of the claimant on June 23, 1992, found low back pain and tingling down the left leg. He diagnosed at that time lumbar strain. Dr. Reschly found the claimant did have symptoms in her low back area after her accident of June 19, 1992. However, these symptoms were temporary and did subside. Accordingly, the Appeals Board affirms the Administrative Law Judge's decision to award claimant temporary total disability benefits, medical treatment and to deny permanent partial general disability benefits.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson dated March 25, 1994, is hereby affirmed in all respects.

**AN AWARD OF COMPENSATION IS HEREIN ENTERED IN FAVOR** of the claimant, Bette Jane Kimball, and against the respondent, Tech, Inc., and its insurance carrier, Hartford Accident & Indemnity, for an accidental injury sustained on June 19, 1992, based on an average weekly wage of \$235.93.

Claimant is entitled to 19 weeks of temporary total disability compensation at the rate of \$157.29 per week, making a total award of \$2,988.51.

As of May 17, 1995, there is due and owing claimant 19 weeks of temporary total disability compensation at the rate of \$157.29 for a total amount of \$2,988.51, which is ordered paid in one lump sum less \$2,509.71 previously paid for a total balance owed of \$478.80.

The respondent is ordered to pay medical expenses in the amount of \$8,502.11.

All other orders of the Administrative Law Judge are herein adopted by the Appeals Board.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stanley R. Juhnke, Hutchinson, KS  
John F. Hayes, Hutchinson, KS  
George R. Robertson, Administrative Law Judge  
George Gomez, Director